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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

-against-

22-cr-0673 (LAK)

SAMUEL BANKMAN-FRIED,

Defendant.
----- X

ORDER

LEWIS A. KAPLAN, *District Judge*.

Defendant Samuel Bankman-Fried has moved to compel the production of certain documents relating to Fenwick & West LLP's representation of FTX Trading Ltd., West Realm Shires Inc., Alameda Research LLC, Alameda Research LTD, and their subsidiaries and affiliates (the "FTX Debtors"). (Dkt 150) The FTX Debtors move to intervene to oppose the defendant's motion, and they request a protective order barring the production of certain allegedly privileged materials.

"The Federal Rules of Criminal Procedure make no reference to a motion to intervene in a criminal case."¹ It is "settled law," however, "that persons affected by the disclosure of allegedly privileged materials may intervene in pending criminal proceedings and seek protective orders[.]"² "A third-party's reasonable assertion of privilege with respect to documents to be produced in a criminal action is sufficient grounds on which to grant the third-party's motion to intervene"³

In the present case, the defendant's motion to compel seeks documents that reflect Fenwick & West LLP's "research, assessment, analysis, guidance, or legal advice" conducted for

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United States v. Aref, 533 F.3d 72, 81 (2d Cir. 2008).

2

United States v. Martoma, 962 F. Supp. 2d 602, 605 (S.D.N.Y. 2013) (quoting *United States v. RMI Co.*, 599 F.2d 1183, 1186 (3d Cir. 1979)).

3

Id. at 605-06.

or provided to the FTX Debtors.⁴ Such requests, on their face, call for documents protected from disclosure by the FTX Debtors' attorney-client privilege.

Accordingly, the FTX Debtors' motion to intervene is granted and the Clerk is directed to add the FTX Debtors as intervenors to the case. The merits of the defendant's motion to compel and the FTX Debtors' motion for a protective order will be addressed in due course.

SO ORDERED.

Dated: June 13, 2023

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", is written over a horizontal line.

Lewis A. Kaplan
United States District Judge